

OCT - 3 2019

AMY J HUNLEY  
CLERK OF SUPERIOR COURT  
By DA Deputy

1 Name Jeffrey D. GONZALVES  
2 Address ASAC - TUCSON, Santa Rita, PO box 24401  
3 City, State, Zip TUCSON, AZ 85734

4 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

5 IN AND FOR THE COUNTY OF COCHISE

6 (INMATE'S NAME)

7 Jeffrey D. GONZALVES

8 Plaintiff,

9 v.

10 COII VAJONER

11 CHARLES RYAN Defendant

12 Capt. DANIEL ROOS

13 WARDEN MONICA TAYLOR

14 STATE OF ARIZONA

No. **CV201900469**

STATE COURT COMPLAINT

JURY TRIAL DEMANDED

PENDENT JURISDICTION

**DIV. 4**

15 I. JURISDICTION (Where there are jurisdictional grounds, set forth.)

16 *This court has jurisdiction pursuant to A.R.S. § 31-201.01 as the*  
17 *only defendant in this case is the STATE OF ARIZONA. ALL OTHER persons*  
18 *are employees of the STATE OF ARIZONA. This court also has*  
19 *pendent jurisdiction.*

20 II. PLAINTIFF (Identify the Plaintiff.) *is an incarcerated inmate in the*  
21 *Arizona Dept. of Corrections. He is also the above plaintiff, over*  
22 *the age of 18 and competent to testify to all issues in this matter.*

23 III. DEFENDANT (Identify the Defendant.)

24 (a). *Monica Taylor, is Deputy Warden at ASPL*  
25 *Douglas Complex.*

26 (b) *Daniel Roos, is Captain in the ADC staff*

27 (c) *COII Vajoner, Dept. Staff*

28 (d) *CR GLYNN, Director/Designee Appeals Unit at*  
*Central Office-ADC*

(e) *Charles Ryan, Director of ADC*

(f) *Carlson McWilliams - Division Director of Offender*  
*operations, ADOC.*

\* Plaintiff did not submit a Notice of Claim because he did not realize this case belonged in the Superior Court until a Federal District Court judge informed him in a Court order dated Filed: 08/07/19, well beyond the 180 days as required by ARS-12-821. the District Court Case Number is: CV-19-00324-TUC-FRZ.

1 IV. EVENTS (Set forth the facts necessary in support of the claim.)

2 Plaintiff only seeks Expungement of Disciplinary  
3 Infraction and the Recission of 180 days Parole Class III.  
4 He does not seek Compensatory and/or Punitive damages  
5 on the loss of good time.

6 In this Complaint, on the night of May 19, 2018,  
7 Plaintiff was informed that he would be transferred  
8 to another prison ~~unit~~ Complex and to pack up his belongings  
9 and place in Property Boxes. The Property boxes was then taken  
10 to the Office. See, (next pages for Continuances)

11 V. APPLICABLE LAW SUPPORTING CLAIM (Set forth applicable law.)

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15 VI. INJURIES (Set forth injuries and damages.)

16 Plaintiff's Parole Hearing will be prejudiced, i.e.,  
17 Set back. Plaintiff Loss 180 days of Parole Class III.  
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1 VII. DEMAND FOR RELIEF (Set forth the relief sought.)

2 *Expungement of Disciplinary Record*  
3 *Recission of 180 days Parole Class III*  
4 *Injunctive Relief*  
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10 DATED this 28 day of August, 20 19.  
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12 Jeffrey D. Gargalves  
13 (Signed)  
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## "CONTINUANCE OF EVENTS"

~~The property boxes~~

Plaintiff was Separated from his property boxes for approximately 72 hours where other inmates had access to the boxes, i.e., for lifting, transferring and placement purposes.

On May 20, 2018, plaintiff was transferred to ADC Douglas Complex from Winslow Complex. On 5/22/18, COIT Haro activated ICS for a White Crystallized Powder Substance found inside a Property Box belonging to plaintiff during Intake.

Upon a physical Search located a Deck of Cards wrapped in a bag inside the box that contained the white crystallized the White Crystallized powdery Substance.

This Search was completed by a K-9 officer Cork. Plaintiff was placed on Report by CO Haro, pictures were taken and Contraband was Secured in CIU evidence locker.

On 6/1/18, plaintiff entered a Not guilty Plea to a 13A disciplinary infraction.

At the disciplinary hearing, COIT Haro testified that, "....

"he did not have to break a taped sealed box to conduct a search discovering the deck of cards within plaintiff's Property Box." At the disciplinary hearing, Capt. Daniel Roos found plaintiff guilty based upon the preponderance of the evidence, he also levied penalties and against plaintiff which will cause his Parole Board to reject his release, in <sup>November</sup> ~~September~~ 2019. Capt. Roos also ordered forfeiting all items in plaintiff's property not listed in the inventory forms; and plaintiff was placed in detention. On 6/1/18, Plaintiff appealed the Disciplinary Infraction's Adequacy of Proof. See, FN-1. On 6/9/18, Warden Monica Taylor upheld the findings of guilt on the basis that, "..... a review of Box did not indicate it had been tampered with...." and that ".... as for the deck of Cards not being listed in your property list, this is common practice than not every item will be itemized...." On 6/13/18, plaintiff appealed the Warden's decision of appeal for the sole reason of Adequacy of proof, to the Director Charles Ryan. On 6/19/18, Plaintiff's Second Level Appeal was responded to by CR Glyn, the Director Designee Appeals Administrator for Charles Ryan. CR Glyn responded and stated in part pt. that, ".... the Disciplinary Hearing reflects that the appropriate standard of proof for the finding of guilt was met." CR Glyn goes on to state that, "The record contains adequate evidence that you committed a 13A offense, Promoting Prison Contraband," whereby denying plaintiff's appeal. See, (Exhibit 8)

FN-1, Adequacy of Proof - on 6/1/18, during the Appeal of

Disciplinary Infraction, plaintiff explained in part, pt. that, "while being transported to Tucson C.I.P. for a layover my personal property was handled by five black inmates/workers. my boxes were not closed by COII Vajones in accordance with D.O. 909.05." Plaintiff goes on to state that, "The next morning my property box was sitting outside of the Tucson C.I.P. building. This violates D.O. 909.05, stating that, "... property that has been inventoried and sealed shall be secured in areas inaccessible to inmates until time for transportation." Dept. Staff's violation of D.O. 909 allowed the opportunity for black inmates/workers to plant a deck of cards with the powdery substance in plaintiff's property...." Furthermore, the black inmates was seeking revenge, as he knew plaintiff was coming up for Parole and a disciplinary infraction will give plaintiff more time, push Parole Date back. Plaintiff was concerned about inmates stealing his property but not placing drugs [in] his property. Plaintiff never owned a Deck of Cards but Cards were found inside a plastic bag inside the property box. See, (Exhibit 1) and (Exhibit 6).

Defendants both subjected and caused the deprivation of plaintiff's Constitutional Rights by failing to make a finding of Guilt in a procedurally proper manner before imposing punishment for violation of prison rules.

Each defendant was personally involved for their individual wrongdoing, in their official and individual capacities, while acting under the color of State laws.

Plaintiff invokes pendent jurisdiction for defendants acts of Negligence. Plaintiff also demands trial by jury.

### COUNT I-A

Defendant COII Vajoner, Inventory Officer, recklessly disregarded ADC's D.O. 909 by [singlet] inventoring and plaintiff's inventory sheet that indicated the inventory was a true and accurate account of his property box. See, (Declaration of Jeffrey Gonsalves).

### COUNT I-B

During the disciplinary hearing on 6/1/18, Defendant Capt. Roos found plaintiff guilty by a preponderance of the evidence but was willfully blinded when ignoring the fact that COII Vajoner completed the inventory of plaintiff's property box on 5/20/18, there was no Deck of Cards listed in his property description form. See, (Exhibits 2 and 3)

### COUNT I-C

Defendant Roos was willfully blinded and deliberately indifferent to the testimony of COII Haro at the Disciplinary Hearing when he testified that he did not have to break a taped sealed box to conduct the search when discovering the Deck of Cards within plaintiff's property box. Defendant Roos avoided having knowledge of Haro's testimony when finding plaintiff guilty. See, (Exhibits 1 and 4)

### COUNT I-D

Defendant Monica Taylor, is the first level of Appeal in the Disciplinary Process and is responsible for making sure Dept. Staff follow all procedures outlined in Dept. Order 909. Defendant displayed a [Custom and Usage] while being deliberately indifferent in permitting Dept. Staff to only make a [Single] [inventory] of each individual item, in violation of D.O. 909. See, (Exhibit 9)

This [Custom & Usage] of ADC Wardens "making sure Staff follow procedures outlined in ADC's policy" is breached by Defendant Taylor when permitting Staff to use their independent discretion as to which items will be inventoried or not be inventoried. This custom of ADC Wardens is widespread and systemic making the entire D.O. 909 disingenuous and untrustworthy. See, (Declaration of Jeff Gonzales at #20)

### COUNT I-E

Defendant CR Glynne is the Director Designee of Appeals Unit Administrator is responsible for monitoring the effectiveness of the procedure and ensuring that all appeals are presented to the Director for Review. Defendants, with Reckless Disregard to the facts which are contrary to CR Glynne's Central Office Level decision demonstrates that, "The Contraband was not found



in plaintiff's possession as plaintiff was separated from his property approximately 72 hours and the plaintiff's property box was not properly secured. See, (Exhibit 8)

### COUNT I-F

Defendant Carson McWilliams - Division Director of Offender Operations - is responsible for the overall operations of the Inmate Grievance and Disciplinary Procedures under the direction of the General Counsel and the Central Office Appeals Unit Administrator.

Defendant, with Wilful Blindness and Reckless disregard was well aware of ADC's Wardens Custom & Usage of "... not listing every item of property boxes on Unit description forms." He is further aware, but acts deliberately indifferent to ADC Wardens permitting its Officers to use their own discretion to list what items [they feel] should be itemized.

### COUNT I-G

Charles Ryan - promulgates and implements D.O. #902 which establishes the controls for property belonging to inmates. Defendant is acts deliberately indifferent to plaintiff's Sixth Amendment Constitutional rights when he fails to establish safeguards to ensure plaintiff will not be arbitrarily or capriciously found guilty and punished

for Rule violations. See, (Declaration of Jeffrey Gonzalez at 21).

### CONCLUSION:

The Contraband was not found on plaintiff. It was found in his property box that was separated from plaintiff approximately 72 hours, where the property was not within his control and was not properly secured. Everyone had access to it! It could have been anyone.

### Relief Requested:

Wherefore, plaintiff requests that this Court grant the following:

A. Issue an Injunction ORDERING defendants Roos, Taylor, Glynn and McWilliams or their agents to:

1. Expunge the Disciplinary Infraction described in this complaint from plaintiff's institutional record.

2. Reversion of 180 Days Parole Class III.

3. Grant such other relief as it may appear that plaintiff is entitled.

by: ~~Jeffrey D. Donahue~~  
Jeffrey W. GONSALVES  
Plaintiff, Petitioner

Copies mailed to the aforesaid  
on this 10th day of Sept. 2019, to:

Clerk, Superior Court